

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROBERT ROGERS)	
Claimant)	
VS.)	
)	
SMITH CONSTRUCTION COMPANY, INC.)	Docket No. 196,798
Respondent)	
AND)	
)	
INSURANCE COMPANY OF NORTH AMERICA, WAUSAU UNDERWRITERS INSURANCE CO., and BUSINESS INSURANCE CO.)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Respondent and Insurance Company of North America (INA) appealed Administrative Law Judge Jon L. Frobish's February 9, 1999, preliminary hearing Order.

ISSUES

Claimant requested medical treatment for a work-related low-back injury. Claimant originally injured his low back at work on December 5, 1992. Respondent provided medical treatment, and claimant continued to work. But claimant currently complains of increasing pain and discomfort in his low back.

The Administrative Law Judge granted claimant's medical treatment request and authorized Pedro Murati, M.D., as claimant's authorized treating physician. The Administrative Law Judge found claimant's current low-back problems were a natural and probable consequence of claimant's December 5, 1992, work-related accident.

Respondent and INA appealed contending that claimant's current need for medical treatment is a result of a new injury or aggravation occurring in November or December 1998 at work. Respondent and INA's brief contends that the Appeals Board has jurisdiction to review this preliminary hearing issue because compensability of claimant's current condition is the issue.

Three different insurance companies participated in these preliminary hearing proceedings. INA provided workers compensation coverage for respondent from August 1, 1992, through August 1, 1994. Business Insurance Company (BICO) provided coverage from August 1, 1994, through August 11, 1997. Wausau Underwriters Insurance Company (Wausau) began coverage on August 11, 1997, and is currently respondent's workers compensation insurance carrier.

In their brief, respondent and Wausau questions the Appeals Board's jurisdiction to review this preliminary hearing issue.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The first issue the Appeals Board will address is whether it has jurisdiction to review this preliminary hearing issue. In their brief, respondent and INA argue that the Appeals Board has jurisdiction because the compensability of claimant's current condition is disputed. But their arguments do not question claimant's need for medical treatment or contend his injury did not occur while working for respondent. Respondent and INA's arguments relate only to claimant's date of accident and which insurance company is liable for payment of medical treatment for that particular date of accident.

The Appeals Board has jurisdiction to review a preliminary hearing issue if it is alleged the Administrative Law Judge exceeded his/her jurisdiction or if it gives rise to a disputed issue identified in K.S.A. 1998 Supp. 44-534a(a)(2). The issue of whether a particular insurance carrier is liable for payment of workers compensation benefits is not a jurisdictional issue that subjects a preliminary hearing order to review by the Appeals Board. Accordingly, at this juncture of the proceedings, the Appeals Board does not have jurisdiction to review the preliminary hearing issue raised by respondent and INA. See Gomez v. Thermal Equipment Corporation, Docket No. 236,062 (December 1998).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that it does not have jurisdiction to review Administrative Law Judge Jon L. Frobish's February 9, 1999, preliminary hearing Order and this appeal should be, and the same is hereby dismissed.

IT IS SO ORDERED.

Dated this ____ day of April 1999.

BOARD MEMBER

c: Steven R. Wilson, Wichita, KS
Vincent A. Burnett, Wichita, KS
Douglas C. Hobbs, Wichita, KS
Ronald J. Laskowski, Topeka, KS
E.L. Lee Kinch, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director